

MEMORANDUM

SEPTEMBER 26, 1985

TO: Boston Redevelopment Authority and
Stephen Coyle, Director

FROM: James English, Project Coordinator
Kevin Morrison, Assistant General Counsel
Karen Jennings-Flynn, Assistant Development Counsel

SUBJECT: Charlestown Navy Yard
Authorization to Execute Lease
Commencement Agreement for Building 75

As you are aware, on April 4, 1985 the Boston Redevelopment Authority granted a Tentative Designation to Basilica Associates, the development entity of NAGE Housing Incorporated, as redevelopers of Building 75 at the Charlestown Navy Yard. The developer's proposal calls for the renovation of Building 75, into approximately 25,000 square feet of commercial office space based on a design by Vitols Associates. The total cost of this development is \$2,400,000.

The resolution granting Tentative Designation called for the execution of an agreement between the Authority and the developer and a Lease Commencement Agreement Summary was incorporated and made part of that Tentative Designation.

The execution of this agreement will enable the developer to finalize financing arrangements for the project. A letter of intent has been secured from the Aetna Insurance Company indicating a desire to participate in the construction and permanent financing of Building 75. In addition, with the execution of this agreement, option payments retroactive to May 1, 1985 will begin generating revenue for the Authority, the amount of which will increase by 100% every three months. This escalation of the amount of option payments is designed to insure a timely start of construction on this project.

In addition, permission is requested for authorization to execute a demolition license with the developer to allow the developer to undertake certain demolition activities prior to the start of construction of improvements. The execution of this license will trigger the commencement of construction rent payments to the Authority by the developer.

It is recommended, therefore, that the Director be authorized to execute a Lease Commencement Agreement with Basilica Associates for the redevelopment of Building 75, substantially in the form attached hereto.

An appropriate vote follows:

Voted: That the Director be, and hereby is authorized to execute a Lease Commencement Agreement with Basilica Associates for the redevelopment of Building 75 at the Charlestown Navy Yard, substantially in the form as attached hereto, and further that the Director be, and hereby is, authorized to execute a demolition License with the developer of this project.

BUILDING #75 CHARLESTOWN NAVY YARD LEASE COMMENCEMENT AGREEMENT SUMMARY

Within 30 days of Tentative Designation, the designated developer and the Boston Redevelopment Authority (BRA) will enter into a Lease Commencement Agreement containing the conditions of Final Designation. The Lease Commencement Agreement will be based on the terms and conditions specified below, which will become effective upon Final Designation.

PROPERTY: Building #75 at Charlestown Navy Yard, as designated by Lessor, 25,000 Building GSF

LESSOR: Boston Redevelopment Authority

LESSEE: Basilica Associates, Limited Partnership

TERM: 50 years

RENEWAL: None

FINAL DESIGNATION: Not more than 270 days from the execution of the Lease Commencement Agreement, subject to extension by mutual agreement of Lessor and Lessee.

LEASE COMMENCEMENT DATE: Simultaneous with Final Designation.

RENT:

A. Option Payment:- \$.15 per GSF per annum payable monthly in advance, to increase by \$.15/GSF per annum at each 3 month interval, will commence one month from the execution of the Lease Commencement Agreement Date and will continue until the start of construction.

B. Base Rent During Construction: 50 percent of the operational period Base Rent, or \$.40 per GSF per annum payable monthly in advance, will commence at the start of construction and will continue until the receipt of a certificate of occupancy.

C. Base Rent: \$.80 per GSF per annum payable monthly in advance, will commence one month after receipt of a certificate of occupancy.

D. Percentage Rent: 15 percent of annual net cash flow payable monthly in advance based on a budget prepared annually and submitted to Lessor not less than 60 days prior to the beginning of each fiscal year. Annual net cash flow shall be calculated by subtracting the following items from effective gross income: certified operating expenses, real estate taxes, Base Rent, and an annual amount equal to 12.5% of certified total project costs, or 10% if IRB financing is utilized. Within 90 days of the end of each fiscal year Lessee shall submit a

calculation of Percentage Rent for that year certified by a CPA acceptable to Lessor and shall make a payment or receive a credit of Percentage Rent based on the certified statement. Until the annual Percentage Rent amount is certified, and payments and credits are allocated, the monthly Percentage Rent payment in any fiscal year shall be no less than one-twelfth of the fiscal year.

MAINTENANCE
FEE:

\$.05 per GSF of the improvements to the Property per annum will commence one month after receipt of a certificate of occupancy and thereafter is subject to an escalation formula for the remainder of the lease. All redevelopers within the Historic Monument Area of the Charlestown Navy Yard will be required to contribute this amount to maintain the public areas therein.

CHARLESTOWN
NEIGHBORHOOD
CONTRIBUTION:

\$.50 per GSF of the improvements to the Property payable simultaneous with the Lease Commencement Date. All redevelopers within the Historic Monument Area of the Charlestown Navy Yard will be required to contribute this amount for community and social activities. Contributions will be distributed in concurrence with the Charlestown Advisory Committee.

DESIGN
GUIDELINES
AND
REVIEW

A. Lessee must adhere to the Design Guidelines issued September 1984 as part of the request for proposals (attached).

B. Lessee must adhere to BRA Design Review Procedures (attached).

C. Lessee must adhere to the BRA Harbor Park Plan.

D. Lessee acknowledges Design Review Procedures will encompass BRA approval of both exterior and interior building design.

SUBORDINATION: Lessor's fee interest in the Property will not be subordinated. Lessor's Base Rent will not be subordinated. Percentage Rent will not be subordinated. In the event of a foreclosure, the Lessor may defer Percentage Rent for a period of time sufficient to allow lender to cure.

FINANCING: Any initial permanent financing may not exceed certified total project costs.

REFINANCING: Lessor will receive as Additional Rent 15% of net refinancing proceeds upon refinancing.

SALE: Lessor will receive as Additional Rent 15% of net sales proceeds upon sale.

ALIENATION: Lessee may not dispose of its interest in the project for five years after issuance of a final certificate of occupancy. Thereafter, Lessee may not dispose of its interest in the project without the written consent of Lessor, such consent not to be unreasonably withheld.

**ESTOPPEL
CERTIFICATE:** Lessor agrees to provide any lender that notifies the Lessor of its mortgage interest with an Estoppel Certificate granting such lender notice of default and right to cure as may reasonably be required.

**CONSTRUCTION
OF
IMPROVEMENTS:** Lessee must make improvements on the Property in accordance with plans and specifications approved by Lessor as part of Lessee's Final Designation within 18 months of such Designation.

**CONSTRUCTION
OF PUBLIC
IMPROVEMENTS:** Lessee must make improvements to that area between Buildings 75 and 106 which comprises the extension of the Second Avenue Pedestrian Mall. Completion of such improvements must adhere to the time schedule specified in the preceding section "Construction of Improvements". The design and construction of the improvements will be subject to BRA design review and approval.

**BOOKS AND
RECORDS:** Lessee must provide Lessor with a statement of project costs computed in accordance with the Land Lease, certified by a CPA, and approved by the Lessor, within 120 days of issuance of a final certificate of occupancy. Lessor will use industry standards as a guide to Lessor's approval.

In addition to the reports required for the Percentage Rent calculation, Lessee must provide Lessor with a statement of operation certified by a CPA, and approved by the Lessor, within 90 days of the close of each fiscal year. Lessor will use industry standards as a guide to Lessor's approval.

**AFFIRMATIVE
ACTION:** Lessee must comply with the Mayor's Executive Order concerning Affirmative Action goals for construction employment, permanent employment and minority business contracting. The Lessor will assist the Lessee in meeting these goals.

**REAL ESTATE
TAXES:** The Property will be fully taxable by the Assessor of the City of Boston at applicable rates.

LIABILITY: Lessor and the City of Boston will not incur any expenses in the development of the Property. The Property will be leased in an "as is" condition. Lessee will pay for the cost of any utility relocation not paid by any utility company.

LEASE COMMENCEMENT AGREEMENT

BOSTON REDEVELOPMENT AUTHORITY

BASILICA ASSOCIATES LIMITED PARTNERSHIP

CHARLESTOWN NAVY YARD
CHARLESTOWN, MASSACHUSETTS

This LEASE COMMENCEMENT AGREEMENT (this "Agreement") is made this day of , 1985, by and between the Boston Redevelopment Authority, a public body politic and corporate organized under the laws of the Commonwealth of Massachusetts (the "BRA"), and the Basilica Associates Limited Partnership (the "Developer"). The BRA and the Developer, collectively, shall be referred to herein as the parties.

WITNESSETH

Reference is made to the following facts:

A. Pursuant to a resolution adopted on April 4, 1985, the BRA tentatively designated the Developer as redeveloper of property known as Building 75 in the Charlestown Navy Yard (the "Site") in the Charlestown Urban Renewal Area, Project No. Mass R-55, in the City of Boston. Pursuant to the terms hereof and the terms of the Lease (as hereinafter defined) there will be a designed, developed and maintained building and other improvements (the "Improvements") upon the Site.

B. The tentative designation by the BRA is subject to the Developer's execution of a management agreement embodying requirements and pre-conditions for final designation, which final designation shall be simultaneous with the effective date (the "Lease Commencement Date") of a long-term ground lease of the Site (the "Lease") from the BRA to the Developer. This Lease Commencement Agreement is the management agreement to which the tentative designation refers.

NOW, THEREFORE, in consideration of these presents and for other good and valuable consideration, it is hereby agreed as follows:

1. All actions of the Developer and the BRA hereunder shall be subject to and in conformity with the following materials (the "Transaction Documents") which are incorporated herein and made a part hereof and as to which this Agreement shall be supplementary except where a specific conflict exists, in which case this Agreement shall prevail. The Developer shall at all times proceed in accordance with the Transaction Documents and this Agreement. The Transaction Documents supersede all other documents or correspondence with respect to this redevelopment prior to the date hereof and consists of: a Resolution of the BRA adopted April 4, 1985, entitled "TENTATIVE DESIGNATION OF REDEVELOPER BUILDING NO. 75, AT THE CHARLESTOWN NAVY YARD IN THE CHARLESTOWN URBAN RENEWAL AREA PROJECT NO. MASS. R-55" and the document entitled "Building 75 Charlestown Navy Yard Lease Commencement Agreement Summary" both of which are attached hereto as Exhibit A.

2. The Developer agrees no later than the later of (i) one hundred and eighty (180) days from the execution hereof or (ii) sixty (60) days following the date the BRA has approved or has been deemed to have approved of the Contract Documents, in either case subject to the extension by mutual agreement of the Developer and the BRA, or by automatic extension pursuant to the design review time table set forth in Paragraph 7 or the provisions of Paragraph 6 of the Agreement, to perform all its obligations under this Agreement and to satisfy all conditions precedent to execution of the Lease established in this Agreement. The BRA, upon determining that the Developer

has so performed and satisfied such conditions precedent, shall make a final designation of the Developer as redeveloper of the Site in accordance with its usual procedures. Simultaneously therewith, if the Developer shall not then be in default of any of its obligations hereunder, the Developer and the BRA shall execute the Lease and the date of execution shall be the "Lease Commencement Date." Whether or not such final designation has been made or the Lease then executed, the Developer shall commence the option and rent payments in accordance with the Lease Commencement Agreement Summary set forth in Exhibit A.

3. Forthwith after the execution of this Agreement, the parties shall enter into negotiation intended to result in the document which is to become the Lease.

Notwithstanding any inconsistent provisions of the Transaction Documents:

(a) Any Lease for Site shall provide for the payment of annual base rent in the amount of Eighty Cents (\$.80) per gross square foot. The percentage and additional rents as set forth in the Transaction Documents shall be incorporated in the Lease and the total amount of gross square footage shall be agreed upon by the parties upon review of measurements submitted by the Developer's Architect.

(b) In addition to the spaces in the parking facility, to be located within the Charlestown Navy Yard in the building popularly referred to as Building 199, which shall be available to the tenants of the Site upon completion of said facility, the completion of which is presently estimated to be during the summer of 1986, the BRA will provide the Developer with temporary parking to meet the reasonable needs as determined by the BRA in its sole discretion, but in a manner acceptable to the leasehold mortgage, of such tenants during construction and prior to completion of the parking facility. Upon the opening for business of the parking facility, any temporary parking arrangements provided by surface parking lots shall be terminated.

(c) The maintenance fee, as described in the Lease Commencement Agreement Summary shall commence January 1, 1986. In addition to the maintenance fee, the Developer shall pay a security fee equal to \$.05 per GSF of the improvements to the property per annum for the support of security services in the Navy Yard which fee shall likewise commence January 1, 1986, and will continue until such time as the BRA determines that such security services are no longer necessary. Said fee will be subject to an escalator formula for the remainder of the lease.

(d) The term of the Lease shall be sixty-five (65) years.

(e) Developer shall construct and make public improvements to that area between Buildings 75 and 106 which comprises the extension of the Second Avenue Pedestrian Mall, using like materials and design as in the existing Second Avenue Pedestrian Mall from Fifth Street to Ninth Street of the Charlestown Navy Yard and the same shall be included as part of the Improvements in all plans to be submitted in accordance with the Design Review Procedure, set forth in Paragraph 7 hereof.

(f) The option payment, as described in the Lease Commencement Agreement Summary, shall be based upon 25,000 gross square feet and shall be retroactive to May 1, 1985.

(g) One half of the Charlestown Neighborhood Contribution, as described in the Lease Commencement Agreement Summary, shall be based upon 25,000 gross square feet and shall be paid on the issuance of the building permit and the remaining portion shall be paid on the issuance of the Certificate of Occupancy.

4. It is the intention of the parties that prior to the Lease Commencement Date, and as a condition precedent to final designation by the BRA as referred to in Paragraph 2 hereof, the Developer shall prepare for the redevelopment of the Site in accordance with the procedures and the schedules set forth in or contemplated by this Agreement, and in general conformity with the Transaction Documents.

5. The sole obligations of the BRA hereunder shall be timely performance of its duties with respect to approvals required hereunder, with respect to final designation and with respect to negotiation and execution of the Lease and the demise of title thereunder as required by Paragraph 6 and to cooperate fully with the Developer in efforts to obtain other approvals from the City of Boston and other governmental authorities. The BRA does not guaranty the issuance of any such other approvals. Consistent therewith, except as otherwise provided in Paragraph 6, the Site is to be delivered on the Lease Commencement Date in its then condition "as is", it being agreed that, during the period of this Agreement, the Developer will have opportunity to examine the same in all respects (including subsurface conditions and utilities). The BRA has made no representations or warranties of any kind with respect to such condition and the BRA shall have no obligation to do any work on or with respect to the Site, or the condition thereof, except for those representations and warranties contained in Paragraph 6.

6. On the Lease Commencement Date, as hereinafter defined, the BRA shall possess, shall demise to the Developer pursuant to the Lease, and thereafter maintain good and clear record and marketable title to the Site, free from all liens and encumbrances and free of all tenants and occupants, subject only to the following permitted exceptions:

- a. Terms and provisions of the Charlestown Urban Renewal Plan, as amended, and specifically the amendment thereto incorporating the Charlestown Navy Yard.
- b. Terms and provisions of the Deed from the General Services Administration of the United States of America to the Boston Redevelopment recorded with Suffolk Registry of Deeds at Book 9182, Page 149.
- c. Terms and provisions of the Application for Transfer of Boston Naval Shipyard for Historic Monument Purposes, Part II, entitled "Program of Preservation and Utilization", to the extent the same is incorporated as part of the Deed referred to in (b) above.

Without limiting the generality of the foregoing, the Developer shall have no obligation to pay relocation assistance to any licensee, tenant or occupant of the Site whose rights are terminated by the BRA in order to deliver title to the Site in compliance with this Paragraph 6.

The Developer shall cause an examination of title to the Site to be made and shall give notice to the BRA no later than forty-five (45) days after the date hereof specifying the (i) the date and time through which such examination was made and (ii) any failure of the record title to the Site to comply with the requirements of this Paragraph 6. The Developer hereby waives its right to object to title defects of record as of the date and time of such examination and not so specified in Developer's notice. If Developer shall fail to give notice of such title examination to the BRA, the Developer shall waive its right to object to any such title defects of record on the date which is forty-five (45) days after the execution hereof. The BRA hereby covenants with the Developer that the BRA shall take no action nor permit a failure to act which would result in or cause the creation of a lien or encumbrance upon the Site or otherwise cause title to or condition of the Site to fail to comply with the requirements of this Paragraph 6. The BRA warrants that it has taken no action, nor omitted to take action, which has resulted in the creation of or contribution to a condition which may give rise to a lien created pursuant to the provisions of Massachusetts General Laws Chapter 21E ("Chapter 21E").

If for any reason the status of title to the Site does not conform to the provisions of this Paragraph 6 on the date of final designation of the Developer as redeveloper of the Site (the "Final Designation Date"), the Developer shall have the right to suspend further production of Design Materials and all dates for performance related thereto until such time as the BRA has caused the status of title to the Site to conform to the requirements of this Paragraph 6. In the event of such failure to conform, at the election of the Developer, the BRA shall remove any defect in title to or condition of the Site created or voluntarily incurred by the BRA and shall use its best efforts to remove any such defect in title to or condition of the Site suffered or involuntarily incurred by the BRA, to provide possession and title as provided in this Paragraph 6; provided, however, that the BRA shall not be obligated to expend more than Ten Thousand Dollars (\$10,000.00) to remove non-monetary defects suffered or involuntarily incurred in title to or condition of the Site. If at the time the BRA is required to expend sums hereunder for the purpose of curing defects in the status of title to the Site and the Developer has not made payments pursuant to Paragraph 2 hereof in an amount at least equal to the amount necessary to effect such cure, the BRA may request that the Developer loan to the BRA the amount so required. If such loan shall be made by the Developer, it shall be repaid by application thereto of all rent payments to be made hereunder or under the Lease until paid in full. In the event that the BRA is unable to remove defects suffered or involuntarily incurred in the title to or condition of the Site, the Developer may elect to accept such title as the BRA can demise to the Site, and the base rent may be reduced by mutual agreement of the BRA and the Developer to reflect the title defect.

7. a. The Design Review Procedure attached to this Agreement as Exhibit B sets forth the formal stages of submissions and approvals of the Schematic Design, the Design Development, and the Contract Documents

(collectively, the "Design Materials") for the Improvements to be constructed and installed by the Developer in the redevelopment of the Site. In the event that any provision of the Design Review Procedure shall be inconsistent with any other provision of this Agreement, then this Agreement shall prevail over such inconsistent provision; otherwise, the Design Review Procedure shall be treated as supplemental to this Agreement. Notwithstanding the foregoing, the parties may execute a separate Design Review Agreement which may modify the Design Review Procedure as agreed to herein. The terms of any such Design Review Agreement shall upon execution supercede and replace the requirements and time table set forth in this Paragraph 7.

b. Within sixty (60) days after the date of approval of the Schematic Design, the Developer shall submit to the BRA the Design Development for the Improvements (as described in the Design Review Procedure). The BRA shall review the Design Development for conformity with the approved Schematic Design and this Agreement and shall, within ten (10) business days after receipt thereof, either approve the Design Development or notify the Developer in writing of disapproval, specifying the respects in which the Design Development is disapproved.

In the event of a disapproval, the Developer shall, within thirty (30) days after the Developer receives the written notice of such disapproval, resubmit the Design Development altered in those respects specified by the BRA as the grounds for disapproval. The resubmission shall be subject to the review and approval of the BRA in accordance with the procedure hereinabove provided for an original submission, until the Design Development shall be approved by the BRA.

If the Developer receives no notification from the BRA of such disapproval within ten (10) business days after submission of the Design Development or any correction thereof, as the case may be, such Design Development or corrected Design Development shall be deemed approved.

c. Within one hundred and twenty (120) days after the BRA has approved, or has been deemed to have approved, the Design Development, the Developer shall submit to the BRA the Contract Documents for the Improvements (as described in the Design Review Procedure). The BRA shall review the Contract Documents for conformity with the approved Design Development and shall, within ten (10) business days of receipt thereof, either approve the Contract Documents or notify the Developer in writing of disapproval, specifying the respects in which the Contract Documents are disapproved.

In the event of a disapproval, the Developer shall, within thirty (30) days after the Developer receives the written notice of such disapproval, resubmit the Contract Documents altered in those respects specified by the BRA as the grounds for disapproval. The resubmission shall be subject to the review and approval of the BRA in accordance with the Design Review Procedure and the timetable hereinabove provided for an original submission, until the Contract Documents shall be approved by the BRA.

If the Developer receives no notification from the BRA of such disapproval within ten (10) business days after submission of the Contract Documents or any correction thereof, as the case may be, such Contract Documents or corrected Contract Documents shall be deemed approved.

d. The BRA hereby acknowledges that it is the intention of the Developer to undertake the Improvements in a manner which will qualify as the rehabilitation of a "certified historic structure" as defined in Section 48(g) of the Internal Revenue Code of 1954, as amended, which will require that the Secretary of the Interior of the United States approve the Schematic Design, Design Development and Contract Documents for the construction of the Improvements. The Developer shall submit any changes in Schematic Design, Design Development or Contract Documents required by said Secretary of the Interior to the BRA for review in accordance with the time table hereinabove provided for an original submission until the same shall be approved by the BRA.

e. With respect to approvals of the BRA under Paragraphs 7a through 7e above, once approval has been given of a submission stage, further review will be limited to consideration of a development or refinement of the previously approved submission or to new elements which were not present in previous submissions.

f. The BRA acknowledges that the construction of the Improvements as shown in the Schematic Design requires the issuance to the Developer of federal, state and municipal permits and approvals, some of which may depend upon examination of various elements of the Project, including without limitation, environmental impacts not fully assessed on the date hereof. If the Developer is unable to obtain all such necessary permits and approvals for construction of such Improvements, the Developer shall redesign the Improvements to conform to any limitations or conditions imposed by such environmental review or in any such permit or approval, and the BRA shall recognize any such limitation or condition in its response to submissions of Design Materials by the Developer hereunder. In the event any such resubmission is required, the times for performance of the Developer's obligations pursuant to this Agreement shall be extended for the periods of time required for the preparation of such resubmission.

8. As part of its submission of Contract Documents, or prior to submission of completed Contract Documents but after approval or deemed approval of Design Development, the Developer may submit plans and specifications prepared by its Architect for purpose of commencing work with respect to certain elements of the Improvements which may include site work, interior demolition, foundation work and other similar items which the Developer proposes to commence on a "fast-track" basis. The BRA will promptly review said plans and specifications for "fast-track" construction and may approve commencement of work on specific "fast-track" construction elements which are demonstrated to the satisfaction of the BRA to be consistent with those portions of the Design Materials previously approved and with elements of the Contract Documents, if any have then been submitted by the Developer, which are acceptable to the BRA. As a condition to proceeding with construction of any "fast-track" element, a copy of the construction contract for construction of such "fast-track" elements and a writing complying with the requirements of Paragraphs 11(a), (b) and (c) hereof, which provides for

construction on a "fast-track" basis, shall be submitted by the Developer in advance to the BRA for its approval. In connection with the approval of "fast-track" construction elements, and notwithstanding any inconsistent provisions of the Transaction Documents, the BRA may make a final designation of the Developer, the Lease may be signed and the date of such execution shall be the Lease Commencement Date; provided, however, that the approval of "fast-track" construction elements shall not waive the BRA's subsequent rights with respect to review and approval of all Design Materials. Any construction prior to BRA approval of the Contract Documents shall be at the sole risk of the Developer with respect to costs of corrective or additional work (which may include demolition) to conform the work to the Design Materials approved by the BRA.

9. It is the general policy of the BRA that all buildings constructed or rehabilitated in urban renewal project areas shall be designed to accommodate persons who are physically handicapped. In furtherance of this policy, and without limiting the Developer's obligation to comply with all legal requirements applicable thereto, the Design Materials (including the Contract Documents) shall include provisions conforming, insofar as practicable, with the rules and regulations promulgated by the Architectural Barriers Board of the Commonwealth of Massachusetts, which rules and regulations, as amended from time to time, are hereby incorporated herein by reference. The BRA shall take into consideration the provisions and objectives of such rules and regulations in its review of and action upon the Design Materials (including Contract Documents).

10. Not later than the later of (i) one hundred and eighty (180) days from the execution hereof or (ii) sixty (60) days following the date the BRA has approved or has been deemed to have approved the Contract Documents, in either case subject to extension by mutual agreement of the parties or by automatic extension pursuant to Paragraphs 6 or 7, the Developer shall submit to the BRA a copy (certified by the Developer to be true and correct) of one or more commitments, issued by a lender or lenders which is an Institution as herein defined, whereby such lender(s) agrees to furnish construction financing or to purchase industrial revenue bonds issued to furnish such financing for the Improvements contained in the Design Materials (subject to such lender's approval of the Contract Documents), together with evidence, satisfactory to the BRA, of the availability of equity capital, which, when combined with the financing to be provided by such lender(s) is adequate to complete the Improvements and provide for all aspects of construction for the redevelopment of the Site (including any off-site improvements required by the Transaction Documents) in accordance with the Transaction Documents and this Agreement. Such commitments shall be accompanied by such further materials as the BRA may reasonably request evidencing satisfaction of, or the Developer's ability to satisfy, the conditions to lending therein set forth. "Institution" shall mean any one of the following:

a. A bank, insurance company, savings and loan association, trust company or a corporation, trust or association qualifying as a real estate investment trust under the provisions of Section 856 of the Internal Revenue Code (or like future provisions of such Code), chartered under the laws of the United States of America or any State thereof, and with a principal place of business in one of such States and a combined capital and surplus account (or, in the case of a mutual company, the equivalent thereof) or not less than One Hundred Million Dollars (\$100,000,000.00).

b. An educational institution with a capital endowment of not less than One Hundred Million Dollars (\$100,000,000.00); or

c. a pension fund established by and for any business corporation or corporations, or by and for any group of employees of a governmental body or of a religious or educational institution, or by and for any trade union and, in each case, having a net worth, determined in accordance with recognized accounting practices, of not less than One Hundred Million Dollars (\$100,000,000.00).

11. Whether or not the Lease Commencement Date shall already have occurred, before beginning any demolition or the construction of the Improvements on the Site, the Developer shall first have submitted to the BRA the following:

a. A copy (certified by the Developer to be true and correct) of the contract between the Developer and one or more general contractors or construction managers (hereinafter called the "Contractor") engaged by the Developer for the rehabilitation of the Improvements shown and described in the Contract Documents, together with a writing executed by the Contractor in which the Contractor undertakes to carry out all of the provisions hereof relating to the work to be performed by the Contractor and those engaged by it, including, but not limited to, the requirements of Paragraphs 15 and 16 below of this Agreement. Such contract and writing (or, in the case of "fast-track" construction of the Improvements, any construction contract related thereto, if it exists) shall be subject to the approval of the BRA which approval shall not be unreasonably withheld;

b. A copy of a building permit issued by the Boston Inspectional Services Department fully covering the Improvements, together with evidence satisfactory to the BRA that all fees in connection therewith have been paid. The Developer shall not conduct work pursuant to a building permit for the demolition or the construction of the Improvements without the prior certification of the BRA that the work to be done or completed as set forth in the permit application is in accordance with the Contract Documents approved by the BRA; provided, however, that plans and specifications for structural, electrical, mechanical or plumbing systems need not have been submitted to and approved by the BRA except to the extent that such systems impact the exterior elements of the Improvements; and

c. A copy of a performance and payment bond if required by the institution or other assurance of completion of the Improvements, as required by the Contract Documents.

12. The Developer shall at all times keep the BRA fully and currently advised of the status of all aspects of the Developer's progress in meeting the terms and provisions of the Transaction Documents and this Agreement with respect to the redevelopment of the Site, including, without limiting the generality of the foregoing, development of the Design Materials, securing financing, and arrangements for construction. All contracts entered into by the Developer under this Agreement respecting the redevelopment of the Site shall obligate the parties thereto to act in a manner consistent with the obligations of the Developer under the Transaction Documents and this Agreement and the Lease or Leases. During the implementation of any such

contracts, the BRA shall have the right to review all aspects of the work performed thereunder in order to insure that such work is being undertaken in a manner consistent with the Contract Documents and this Agreement. Such inspections and reviews shall be undertaken at reasonable times, following notice to the Developer.

13. Attached hereto as Exhibit C to this Agreement is a License dated of even date herewith granted by the BRA to the Developer (the "License"). The Developer hereby agrees to perform and observe all the terms and conditions of the License. The Developer shall make available to the BRA the results of all tests, surveys and examinations resulting from its entry upon the Site.

In the event this Agreement shall be terminated for any reason other than the failure of the BRA to perform its obligations hereunder, then, at the election of the Institution, the Developer will turn over and cause others to turn over to the BRA all reports, test data, plans and other material developed in connection with its efforts hereunder relative to redevelopment of the Site or any part thereof. The Developer agrees to use best efforts to secure the agreement of its providers of services so that the BRA (or others to whom the BRA may at any time transfer all or any part of such material) shall thereafter be free, without obtaining the consent of the Developer or the provider of any such services and without liability or cost, to use material turned over to it or required to be turned over to it; provided, however, that prior to any such transfer, the BRA shall release and indemnify the Developer and all such providers of services from and against any and all liabilities, claims, damages or demands, of every name and nature arising out of the use of such materials by the BRA or any such others.

14. The Developer agrees that all studies undertaken by it and all work done by it for or with respect to the redevelopment of all or any part of the Site prior to the Lease Commencement Date shall be at its sole cost and expense and without liability to the BRA, that the same shall be undertaken in compliance with all applicable laws and regulations and that the Site shall be restored to its prior condition, to the extent reasonably possible, after any physical disruption to the surface or subsurface thereof in the course of any pre-construction testing or exploration if the Lease or Leases is not executed.

15. The Developer for itself and all successors and assigns, agrees that in the redevelopment of the Site and in all construction activity undertaken therein:

a. The Developer will not discriminate against any employee or applicant for employment because of race, color, sex, religion, age or national origin. The Developer will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during their employment, without regard to their race, color, religion, sex, age or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or compensation, and selection for training, including apprenticeship. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

b. The Developer will, in all solicitations or advertisements for employees placed by or on behalf of the Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age or national origin;

c. The Developer will send to each labor union or representative of workers with which the Developer has a collective bargaining agreement or other contract or understanding, a notice, to be provided, advising the said labor union or workers' representative of the Developer's commitments under Section 202 of Executive Order #11246 of September 24, 1965, as amended* and shall post copies of the notice in conspicuous places available to employees and applicants for employment;

d. The Developer will comply with all provisions of Executive Order #11246 of September 24, 1965 as amended,* and of the rules, regulations, and relevant orders of the Secretary of Labor;

e. The Developer will furnish all information and reports required by Executive Order #11246 of September 24, 1965, as amended,* and by the rules, regulations, and orders of the Secretary of Labor, pursuant thereto, and will permit access to the Developer's books, records, and accounts by the BRA, the Secretary of Housing and Urban Development, and the Secretary of Labor, for purposes of investigation to ascertain compliance with such rules, regulations and orders;

f. In the event of the Developer's noncompliance with the nondiscrimination clauses of this Paragraph 15, or with any of said rules, regulations, or orders, upon written notice to the Developer, and the continuance of such noncompliance for sixty (60) days thereafter, this Agreement may be terminated or suspended in whole or in part by the BRA. In addition, the Developer may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order #11246, of September 24, 1965, as amended* or by rules, regulations or orders of the Secretary of Labor, or as otherwise provided by law; and

g. The Developer will include the provisions of subparagraphs a through f of this Paragraph 15 in every contract and purchase order, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order #11246 of September 24, 1965, as amended,* so that such provisions will be binding upon each such contractor, subcontractor, and vendor as the case may be. The Developer will take such reasonable action with respect to any construction contract, subcontract, or purchase order as the BRA directs as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the Developer becomes involved in or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the BRA, the Developer may request the United States to enter into such litigation to protect the interest of the United States.

*Executive Order #11246 of September 24, 1965 as amended by Executive Order #11375 of October 13, 1967.

16. The Developer, for itself and its successors and assigns, further agrees, that in all construction activity undertaken with respect to the Site, the Developer shall submit a plan, to be known as its Boston Residents Construction Employment Plan to the Director which plan shall set forth in detail the Developer's plans to ensure that on a craft-by-craft basis, the following Boston Residents Construction Employment Standards are met: (1) at least 50 percent of the total employee workerhours in each trade shall be by bonafide Boston residents, (2) at least 25 percent of the total employee workerhours in each trade shall be by minorities; and (3) at least 10 percent of the total employee workerhours in each trade shall be by women. (Workerhours shall include work performed by persons filling apprenticeship and on-the-job training positions.)

i. The Developer shall incorporate in every general construction contract or construction management agreement an enumeration of the foregoing worker hour goals and shall impose a responsibility upon the Contractor to incorporate such worker hour goals in all subcontracts,

ii. Each of the BRA, the Developer, the Contractor, and each subcontractor shall designate an individual to serve as affirmative action officer for the purpose of carrying out the efforts to achieve worker hour goals set forth herein;

iii. Contemporaneously with the start of construction, the affirmative action officers and other interested representatives of the BRA, the Developer, the Contractor, and each subcontractor then selected shall hold a pre-job conference with appropriate union representatives of the construction trade unions for the purpose of reviewing the worker hour goals applicable to the Project and the manning requirements for construction activity over the life of the construction period;

iv. Each request for qualified construction workers made by any person involved in the construction of the Project to a union hiring hall or business agent shall contain a recitation of such worker hour goals and a request that qualified referees for construction positions on the Project be selected in the same proportion as such goals; provided, however, that if at the time of any such manning request the requesting party's workforce composition falls short of any one or more of such goals, such manning request shall seek qualified referees in such proportion among such categories as would be necessary to more fully achieve such goals. In the event that the union hiring hall or business agent to which or whom such a manning request has been submitted fails to comply with such requests, the affirmative action officer of such requesting party shall seek to verify that insufficient workers in the categories specified in such request are then shown on the unemployed list maintained by such union hiring hall or business agent by seeking to obtain an affidavit from the union hiring hall representative or business agent to such effect. Copies of any affidavit so obtained shall be forwarded to the affirmative action officer of the BRA;

v. All persons applying directly to the Contractor, or subcontractor for employment in construction on the project who are not employed by the party to whom application is made will be referred to the affirmative action officer of the BRA and a written record of such referral shall be made, a copy of which shall be sent to such officer; and

vi. The Developer, the Contractor, and each subcontractor shall maintain records reasonably necessary to ascertain compliance with the requirements of this Paragraph 16 for at least one year after the Completion Date and will make the same available for inspection by the BRA upon reasonable notice.

In addition to the foregoing, the Developer, and its successors and assigns, shall comply, as determined by the BRA, with the Executive Order of the Mayor of the City of Boston, dated June 28, 1978, relative to contracting with Minority Business Enterprises in all construction activity undertaken with respect to the Site.

17. The parties acknowledge and agree that any Institution approved by the BRA and involved in the development or permanent financing of the Site with the Developer as leasehold mortgagee, may require modifications to the form of the Lease for the purpose of implementing the mortgagee protection provisions thereof or otherwise facilitating the financeability of such Leases. The BRA agrees not to withhold unreasonably its agreement to enter into such requested modifications provided that, in the sole opinion of the BRA, the same shall in no way affect the term or rent (base, percentage or additional) or otherwise in any material respect adversely affect any of the rights or interests of the BRA under the Lease. Without limitation, before giving any such agreement, the BRA may require reasonable changes to any proposed modification.

18. The Developer hereby agrees to defend, indemnify and hold harmless the BRA, its members, officers and employees from and against all claims, costs, fees, expenses, liabilities and damages (including attorneys' fees and costs of investigation and litigation) whatsoever which may be incurred or for which liability may be asserted as the result of any activities undertaken by or for the Developer in its implementation of this Agreement or its activities with respect to the Site, but such indemnification shall not extend to liability asserted as a result of any activity undertaken by or for the BRA in implementing its obligations hereunder.

19. If the Developer shall neglect or fail to perform or observe any obligation herein contained to be performed or observed on the part of the Developer and the BRA shall serve upon the Developer notice of such neglect or failure and if the same shall not be cured within sixty (60) days of notice thereof, or, if the same shall not be capable of being cured within such sixty (60) day period, the Developer shall fail to commence such cure within sixty (60) day period and diligently prosecute the same to completion, or the Lease shall not, for whatever reason, other than failure of the BRA to act in good faith with respect to the negotiation and execution thereof, be executed within two (2) years from the date of execution hereof, the BRA may at any time thereafter upon further notice, terminate this Agreement and rescind the tentative designation of the Developer and terminate all other rights, interests and claims of the Developer to and in the Site. Except with respect to those obligations which survive termination as provided in the following sentence, termination of this Agreement, together with retention of all payments therefor made pursuant to the Transaction Documents and this Agreement shall be the sole remedy in lieu of all of the rights and remedies the BRA may have against the Developer on account of any failure or default on the part of the Developer hereunder. Notwithstanding such termination, the Developer

shall remain liable for all obligations theretofor accrued by its hereunder and the obligations of the Developer under Paragraphs 13, 14 and 18 hereof shall survive the termination of the Agreement, but otherwise the Developer's obligations shall not survive termination.

20 a. Time is of the essence in the performance of this Agreement, and the parties hereto shall diligently, promptly and punctually perform the obligations required to be performed by each of them and shall diligently, promptly and punctually fulfill the conditions applicable to each of them.

b. The waiver of the BRA or the Developer of any breach of any term or condition herein contained shall not be deemed to be a waiver of such term or condition or any subsequent breach of the same or any other term or condition herein contained.

c. Recognizing that the parties may find it necessary to establish to third parties the then current status of performance hereunder, either party, on the written request of the other made from time to time, will promptly furnish a written statement on the status of any matter pertaining to this Agreement within a reasonable time.

d. If any term or provision of this Agreement, or the application thereof to any persons or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby. Each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

e. No member of the Congress of the United States of America shall be admitted to any share or part hereof, or to any benefit to arise from this Agreement. No member, official, or employee of the BRA shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interests of any corporation, partnership, or association in which he or she, directly or indirectly holds an "interest" as that term is defined in M.G.L. Chapter 268A.

f. No member, official or employee of the BRA shall be personally liable to the Developer in the event of any default or breach by the BRA or for any amount which may become due to the Developer or on any obligations under the terms of this Agreement.

g. Except as otherwise specifically provided in this Agreement, whenever under this Agreement approvals, authorizations, determinations, satisfactions or waivers are required or permitted, such approvals, authorizations, determinations, satisfactions or waivers shall be effective and valid only when given in writing signed by a duly authorized officer of the BRA or the Developer. Any notice required or desired to be given pursuant to this Agreement shall be in writing with copies directed as indicated below and shall be personally served, or, in lieu of personal services, services may

be made by depositing same in the United States mail, postage prepaid, certified or registered mail. If such notice shall be addressed to the BRA, the address of the BRA is:

Director's Office
Boston Redevelopment Authority
One City Hall Square
Boston, Massachusetts 02201

with copies to:

Chief General Counsel
Boston Redevelopment Authority
One City Hall Square
Boston, Massachusetts 02201

and if addressed to the Developer, the address of the Developer is:

Mr. Joseph DeLorey
c/o NAGE Housing, Inc.
285 Dorchester Avenue
Boston, MA 02127

with copies to:

Attorney Walter Kelliher
6 Pleasant Street
Malden, MA 02148

Either the BRA or the Developer may change its respective address by giving written notice to the other in accordance with the provisions of this Paragraph.

Any request for approvals made by the Developer to the BRA where such approvals shall be deemed granted after a period of non-reply by the BRA shall, as a condition to the effectiveness thereof, be prefaced with the following language printed in capital letters in bold face type in each instance setting forth the applicable length of such period of non-reply:

"NOTICE

THIS REQUEST FOR APPROVAL REQUIRES IMMEDIATE REPLY

FAILURE TO RESPOND WITHIN _____ DAYS

SHALL RESULT IN AUTOMATIC APPROVAL"

h. Nothing herein shall constitute the relation between the parties hereto to be other than an independent one, it being their intent that this Agreement shall not constitute a partnership or a joint venture.

WITNESS the execution hereof on the date first above written.

Approved as to Form:

BOSTON REDEVELOPMENT AUTHORITY

Chief General Counsel

By: _____
Stephen Coyle, Director

BASILICA ASSOCIATES

By: _____

Title: _____

